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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/919,747	08/01/2001	Joseph C. Murray	THERM2A4-CIP	6570

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C. Emmett Pugh
Pugh/Associates, Patent & Trademark Attorneys
82 N. Main St.
Suffield, CT 06078-2102

EXAMINER

BUI, LUAN KIM

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 02/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/919,747

Applicant(s)

MURRAY, JOSEPH C.

Examiner

Luan K Bui

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 and 13 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9, 10 is/are allowed.
- 6) ☒ Claim(s) 11, 12 and 14-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8/1/01</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. Claims 1-8 and 13 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 8/13/2004. As a point of clarification, in claim 8, the phrase "said pouch" lacks proper antecedent basis. It appears that claim 8 is depending from claim 7.

Specification

2. The abstract of the disclosure is objected to because it is too long. Correction is required. See MPEP § 608.01(b).

3. Applicant is required to update the current status of the related applications as indicated in the cross reference to related applications on page 1 of the instant patent application.

4. The disclosure is objected to because of the following informalities: the web site as indicated on page 4 of the instant specification is not permissible in the application. Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 14-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrases "said packaging material" in claim 14 and "said packing material" in

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claim 19 lack proper antecedent basis. Claim 20 is vague, confusion and indefinite because it has no clear meaning.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 11, 12, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Becker et al. (5,820,268; hereinafter Becker'268). Becker'268 discloses a packaging system comprising a corrugated packing box/delivery box (12) having an interior surface made up of a set of flat surfaces and an insulating and a multi-ply packaging material (10, 28) including a first layer of sheet material (32) having a substantially flat surface and a second layer of sheet material (36, 38) having flexible bubble wrap material with at least one side having a series of bubbles (36) thereon and each bubble having an outermost surface in contacting, face-to-face engagement with the flat surface of the first layer forming a multitudinous series of pockets (34) of gaseous media between the bubbles and the flat surface. As to claim 12, a layer (32) of the container/pouch (10) is considered equivalent to a box having interior wall surfaces and the wall surfaces forming the flat surface of the first layer which interfaces with the outermost surfaces of the bubbles to form gaseous media pockets (34).

9. Claims 11, 12, 19 and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Becker (6,443,309; hereinafter Becker'309). Becker'309 discloses a packaging system comprising a corrugated packing box/delivery box (12) having an interior surface made up of a set of flat surfaces (86) and an insulating and a multi-ply packaging material (10) including a first layer of sheet material (24) having a substantially flat surface and a second layer of sheet material (19, 20, 22) having flexible bubble wrap material with at least one side having a series of bubbles (20) thereon and each bubble having an outermost surface in contacting, face-to-face engagement with the flat surface of the first layer forming a multitudinous series of pockets (Figure 2) of gaseous media between the bubbles and the flat surface. As to claim 12, a layer (24) of the container/pouch (10) is considered equivalent to a box having interior wall surfaces and the wall surfaces forming the flat surface of the first layer which interfaces with the outermost surfaces of the bubbles to form gaseous media pockets.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Becker et al. (5,820,268; hereinafter Becker'268) or Becker (6,443,309; hereinafter Becker'309) in view of Ellis (5,639,523) or Marzano (6,139,188). As to claim 14, Becker'268 or Becker'309 discloses a

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packaging system comprising a corrugated packing box (12) having an interior surface made up of a set of flat surfaces and a cover placed all about the box except for an interior layer of bubble wrap packing material having at least one side having a series of bubbles with each having an outermost surface being in contacting engagement with the flat surfaces of the box forming a series of pockets of gaseous media between the bubbles and the flat surface. Ellis shows in the embodiment of Figures 9-14, a packing box (41) having an interior made up of a set of flat surfaces and an interior layer of bubble wrap packing material (33) in contacting engagement with the flat surfaces to form a series of pockets of gaseous media between the bubbles and the flat surfaces. Marzano teaches a bag (20) having an interior made up of a set of flat surfaces (63) and an interior layer of bubble wrap packing material (64, 65) in contacting engagement with the flat surfaces to form a series of pockets of gaseous media between the bubbles and the flat surfaces (Figure 2). It would have been obvious to one having ordinary skill in the art in view of Ellis or Marzano to modify the corrugated packing box of Becker'268 or Becker'309 so the box includes an interior layer of bubble wrap packing material having at least one side having a series of bubbles with each having an outermost surface in contacting engagement with the flat surfaces of the box forming a series of pockets of gaseous media between the bubbles and the flat surface for further protecting the products disposed within the packing box. The structural limitation of claim 17 is read on the multi-ply packaging material of Becker'268 or Becker'309.

Allowable Subject Matter

12. Since claim 9 depends on claims 1, 7 and 8. The combination of claims 1 and 7-10 only are allowed.

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13. Claim 18 would be allowable if rewritten to overcome the rejection(s) under 35

U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is (571) 272-4552. If in receiving this Office Action, it is apparent to Applicant that certain documents are missing from the record for example copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Ms. Merilyn Watts at (571) 272-4398.

Any inquiry of a general nature or relating to the status of this application should be directed to the Customer Service whose telephone number is (703) 306-5648. Facsimile correspondence for this application should be sent to (703) 872-9306 for Formal papers and After Final communications.

lkb
February 5, 2005



Luan K. Bui
Primary Examiner